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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARNOLD NANCE,  
  
Plaintiff,  
  
vs.  
  
TIME WARNER CABLE, INC., a  
corporation or other form of legal  
entity and DOES 1 through 100,  
inclusive,  
  
Defendants.

Case No. CV08-07340 R (FFMx)

**FINDINGS OF UNCONTROVERTED  
FACTS RE DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

Complaint Filed: September 26, 2008

Hon. Manuel L. Real  
Date: October 19, 2009  
Time: 11:00 a.m.  
Courtroom: 8

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After consideration of the papers in support of and in opposition to Defendant Time Warner Cable, Inc.'s ("TWC" or "Defendant") Motion for Summary Judgment, the Court determines that the following facts have been established as uncontroverted:

<b><u>UNCONTROVERTED FACTS</u></b>	
<b><u>UNCONTROVERTED FACT</u></b>	<b><u>SUPPORTING EVIDENCE</u></b>
<b>Nance's Job Responsibilities</b>	
1. In June 2003, Larry Fisher, then-President of TWC's Media Sales Division, and Brendan Gleason, Senior Vice President of Finance for TWC, hired Arnold Nance into the Media Sales Division as Director of Finance & Business in the West Regional Operations Center (ROC) located in Los Angeles.	Deposition of Arnold Nance "Nance Depo." at 49:8 to 51:19 (Referenced excerpts and exhibits of Nance's deposition are attached as Exhibit A to the Declaration of Jason S. Mills ("Mills Decl."), filed concurrently).
2. The West ROC provided "back office" support for TWC's Media Sales Division—which sells ad time on the cable network.	Declaration of Barry Feldstein "Feldstein Decl." ¶ 8 (filed concurrently)
3. Nance was the senior accountant responsible for handling all financial matters for the West ROC.	Nance Depo. at 58:4-13.
4. Part of Nance's job was to prepare quarterly management representation letters	Nance Depo. at 102:25 to 104:9.

1	for the West ROC.	
2	5. Rep letters are prepared to assist	Feldstein Decl. ¶ 14.
3	outside auditors and certify management's	
4	belief that the company's financial	
5	statements fairly present the company's	
6	financial condition and results.	
7	6. Rep letter "exceptions" note, for	Feldstein Decl. ¶ 14.
8	example, internal control issues and	
9	financial information that the signatories	
10	cannot certify.	
11	7. As part of Nance's job, he was	Nance Depo. at 112:11-19.
12	"obligated" to report exceptions in the rep	
13	letter.	
14	8. Then-Vice President of Technical	Deposition of William Osbourn
15	Accounting, Bill Osbourn, encouraged the	("Osbourn Depo") at 96:24-97:16
16	finance and accounting personnel to raise	(Referenced excerpts of Osbourn
17	anything in an exception that they had a	Depo. are attached to Mills Decl.
18	question about.	as Exh. G).
19		
20	9. The West ROC's rep letter covered a	Feldstein Decl. ¶ 16.
21	small fraction of TWC's entire business.	
22	For example, in fiscal year 2007, revenue for	
23	the Media Sales Division nationwide was	
24	about \$236 million compared to revenue for	
25	the whole company, which was about \$16	
26	billion.	
27		
28	10. Nance's job also included	Nance Depo. at 79:12 to 80:14;

1	communicating with “Adlink.”	83:13-25.
2	11. Adlink is an “Interconnect,” which is	Feldstein Decl. ¶¶ 3-4.
3	a partnership among cable companies to	
4	facilitate sales of advertising spots in a	
5	particular region.	
6	12. Through an Interconnect, advertisers	Feldstein Decl. ¶ 3.
7	can enter a single contract to purchase ad	
8	spots that run on all competing cable	
9	networks in a region at the same time, thus	
10	ensuring maximum viewership.	
11	13. Before a series of mergers occurred in	Nance Depo. at 73: 17-24; 76:4-
12	mid-2006, Adlink was comprised of five	21
13	primary partners: TWC, Comcast, Adelphia,	
14	Charter, and Cox Communications.	
15	14. Each of the five primary partners in	Nance Depo. at 73: 17-24; 76:4-
16	Adlink contributed inventory to Adlink in	21
17	the form of 30-second ad slots.	
18	15. Adlink, in turn, sold the spots to	Nance Depo. at 73: 17-24; 76:4-
19	businesses. The cost of ad slots was based	21
20	on ratings points, which were determined by	
21	The Nielsen Company.	
22	16. Adlink then distributed revenue to the	Nance Depo. at 73: 17-24; 76:4-
23	partners based on the number of cable	21
24	subscribers (“subscriber counts” or “sub	
25	counts”) that each partner reported to Adlink	
26	in quarterly reports.	
27	17. The term “subscriber” was defined by	Feldstein Decl. ¶¶ 6-7, 63, Exh. 2.
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contract with Adlink. The definition of a subscriber under the Adlink contract in the 2004-06 time-period included gratis accounts or “frees,” which are non-paying, authorized viewers (typically VIPs and company employees).

18. Nance did not know whether the sub count calculation was based on a definition set forth in a contract with Adlink. Rather, Nance believed that there was a “common definition” of sub count, which is “generally a paid subscriber, someone who pays for your service.”

Nance Depo. at 125:9-11; 126:5-7.

### **TWC’s Dramatic Structural Changes From 2006 To 2008**

19. In March 2006, Larry Fischer informed Nance that he was being promoted to Senior Director of Finance at the West ROC.

Nance Depo. at 86:21-25; 88:5-11.

20. Shortly after Fischer informed Nance of his promotion, Fischer’s and Gleason’s employment ended and they were replaced by Joan Gillman and Barry Feldstein, respectively.

Feldstein Decl. ¶ 11.

21. Effective July 16, 2006, Feldstein was hired as a corporate Vice President of Finance at TWC’s headquarters in New York overseeing all Media Sales.

Feldstein Decl. ¶ 8.  
Barry Feldstein Deposition (“Feldstein Depo.”) at 96:16-19; 121:5-14 (Referenced excerpts are

1		attached to Mills Decl. as Exhibit B)
2	22. Gillman, who also officed in New	Joan Gillman Deposition (“Gillman
3	York, became the President of Media	Depo.”) at 20:17-20 (Referenced
4	Sales	excerpts are attached to Mills Decl. as
5		Exhibit C)
6	23. Feldstein had been hired from	Feldstein Decl. ¶¶ 9-10.
7	Comcast, where he had held the title of	Feldstein Depo. 18:2-19:18.
8	Vice President of Business Operations	
9	and had gained extensive experience in	
10	cable industry mergers and Interconnects	
11	(including Adlink).	
12	24. As of July 2006, Nance began	Nance Depo. at 142:18-21.
13	reporting to Feldstein.	
14	25. In this same time-frame, TWC	Shabnam Dewji Deposition (“Dewji
15	also hired Comcast’s former Director of	Depo.”) at 10:5-12; 16:17 to 17:1
16	Operations, Shabnam Dewji.	(Referenced excerpts are attached to
17		Mills Decl. as Exhibit D)
18	26. At Comcast, Dewji had been	Dewji Depo. 10:5 to 11:12; 18:18-21;
19	responsible for calculating Comcast’s	29:3-6.
20	sub counts and submitting them to	Feldstein Depo. 36: 1-5.
21	Adlink.	
22	27. Effective August 1, 2006, TWC	Nance Depo. at 88:5-11; 90:15-24;
23	merged with the Los Angeles operations	90:6 to 91:2.
24	of Comcast and Adelphia, which	
25	increased TWC’s market share from	
26	17% to 73%.	
27	28. In February 2008, TWC entered a	Feldstein Decl. ¶ 19.
28		

1 2 3	contract with Charter to manage its advertising inventory and employees in Los Angeles.	
4 5 6 7 8 9	29. TWC became the managing partner of Adlink through a new partnership agreement that became effective in February 2008. TWC then became responsible for Adlink's financial reporting.	Feldstein Decl. ¶ 20. Nance Depo. at 91:3-13; 95:23 to 96:12; 97:15 to 98:23.
10 11 12 13 14	30. As a result of these dramatic structural changes, by early 2008, about 540 employees from four different cable and Adlink now were all part of TWC's Media Sales Division.	Feldstein Decl. ¶ 21.
15 16 17 18 19 20 21	31. Feldstein was responsible for creating a plan to extract savings from the consolidation by eliminating redundancies in the West ROC, including a reduction in force that eliminated about 90 jobs.	Feldstein Decl. ¶ 31. Gillman Depo. at 96:3-12
22	<b>Nance's Anger Management Problem</b>	
23 24 25 26 27	32. In September 2006, after several complaints had been made about Nance's behavior, Human Resources recommended to Feldstein that he counsel Nance.	Feldstein Decl. ¶¶ 23, 62, Exh. 1. Nance Depo. at 261:12 to 265:9.
28	33. Feldstein did so and, at the	Feldstein Decl. ¶¶ 23, 62 Exh. 1.

1 suggestion of Human Resources,	Nance Depo. at 261:12 to 265:9.
2 recommended that Nance attend an	
3 anger management training course.	
4 34. The counseling resulted from a	Kristin Payne Deposition (“Payne
5 formal complaint about Nance’s	Depo.”) at 37:4 to 38:3 (referenced
6 behavior that Christal Morris brought to	excerpts are attached as Exhibit F);
7 the attention of Feldstein and Kristin	Feldstein Depo. at 140:25 to 142:1
8 Payne, then-Senior Director of Human	
9 Resources for Media Sales. Morris was	
10 a new Human Resources Manager	
11 located in the Cypress, California office	
12 where Nance’s office was located.	
13 Morris described complaints indicating	
14 that Nance was difficult to deal with and	
15 combative.	
16 35. The employees that complained to	Payne Depo. at 96:8-97:13.
17 Morris were sales people as well as	
18 Shabnam Dewji, Director of Operations.	
19 36. A number of employees also	Payne Depo. at 48:24-49:15; 56:24-
20 reported Nance’s behavioral problems	57:19; 58:19-60:8.
21 directly to Payne, including Tim Young,	
22 Dave Bultman, Blaine Rominger, and	
23 Chris Faw, Vice President of	
24 Operations.	
25 37. Payne noticed a pattern to the	Payne Depo. at 58:19-60:8
26 issues raised about Nance, including his	
27 “behavior, his temper, his demeanor, his	
28	

1	mood swings, his being combative.”	
2	38. Payne also personally observed an	Payne Depo. at 60:17 to 61:3; 100:23
3	instance where Nance was verbally	to 103:4; <i>Id.</i> at 111:12-20 (dinner was
4	abusive to the Vice President of	some time in summer of 2006)
5	Strategic Planning, Larry Zipin. The	
6	incident occurred before the close of	
7	Adelphia/Comcast merger in the	
8	summer of 2006. Nance became very	
9	argumentative and the whole table	
10	stopped talking and stared. Nance was	
11	asking Larry Zipin questions “and it	
12	became very hostile, very	
13	argumentative, and he was sort of	
14	attacking Larry Zipin.” Larry Zipin did	
15	not display any hostility.	
16	39. Larry Fischer was informed about	Payne Depo 108:7-109:21
17	the incident. Payne asked him to have a	
18	conversation with Nance about his	
19	behavior, and she believes that the	
20	conversation occurred.	
21	40. Larry Zippen spoke to Angelo	Angelo Servedio Deposition
22	Servedio, Director of Finance at TWC	(“Servedio Depo.”) at 45:5-46:4
23	corporate in New York, about the dinner	(Referenced excerpts attached as
24	in Los Angeles and said that Nance had	Exhibit E to the Mills Decl.)
25	been verbally abusive to him.	
26	41. Servedio heard similar comments	Servedio Depo at 47:19-48:17
27	about Nance’s behavior from other	
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1 employees, including Dave Martinez, 2 Dominic Lattore and Vias Carusis, who 3 reported to Nance. They said Nance was 4 “yelling at people and getting in their 5 face and that sort of thing.” They 6 reported that this behavior was not an 7 isolated incident.	
8 42. Servedio heard similar comments 9 about Nance’s behavior from Brendon 10 Gleason as well as other Directors of 11 Finance, including Gerry-Lynn Bressler, 12 Ria Carter, and Ken Welch.	Servedio Depo 82:24-85:7
13 43. In addition, Brendon Gleason 14 informed Servedio that Nance was 15 terminated from the job he held before 16 coming to TWC (where Nance had 17 worked with Gleason and Servedio) 18 because Nance was verbally abusive to 19 people.	Servedio Depo at 92:3-13
20 44. Servedio testified that Nance had 21 a reputation for being a hot head and he 22 formulated this opinion not long after he 23 became employed at TWC.	Servedio Depo. at 43:4-23; 82:10-23 (Nance was a good accountant but “had a reputation of being somewhat of a hothead”); (“Arnie had a reputation as a hothead”)
24 45. Because Servedio heard similar 26 comments about Nance’s behavior from 27 so many sources, he concluded that it	Servedio Depo. at 88:4-25; 89:22- 90:3

1	was true.	
2	46. Employees also discussed	Feldstein Depo. at 145:17-147:17
3	Nance's behavioral problems directly	
4	with Feldstein. For example, Tim	
5	Young, Vice President of Sales,	
6	informed Feldstein that Nance "had	
7	threatened him" and "was difficult to	
8	work with," and suggested that Feldstein	
9	terminate Nance. In describing the	
10	threat, Young said that Nance leaned	
11	over and said, "I'll bury you."	
12	47. Joan Gillman participated in a	Gillman Depo. at 38-40; 48:7-16
13	conversation with Feldstein and Young	
14	in October 2006 in which Young	
15	complained about Nance. Young said	
16	that Nance was creating a hostile work	
17	environment and he wanted Feldstein to	
18	deal with it. Young described Nance's	
19	anger, his use of swear words and	
20	generally aggressive conduct in dealing	
21	with others in the organization.	
22	48. Feldstein and Payne informed	Gillman Depo. at 49:2-18
23	Gillman that there had been complaints	
24	about Nance's behavior and that they	
25	were addressing the problem with	
26	Nance.	
27	49. Director of Sales Blane Rominger	Feldstein Depo. at 142:6-12
28		

1	made a complaint to Feldstein about	
2	Nance's behavior.	
3	50. Shabnam Dewji complained to	Feldstein Depo. at 148:23-149:20
4	Feldstein about Nance's behavior.	
5	Nance treated her inappropriately in a	
6	meeting, which other witnesses also	
7	reported to Feldstein, including Vias	
8	Karouzas.	
9	51. Chris Faw complained to	Feldstein Depo. at 152:17-153:2
10	Feldstein about Nance because managers	
11	in Los Angeles that reported to Faw	
12	complained to Faw about Nance's	
13	behavior. Faw said that he couldn't	
14	keep a manager in California because	
15	Nance would just run them out.	
16	52. Feldstein understood that the	Feldstein Depo. at 144:1-8.
17	mergers that were occurring in the West	
18	in the 2008-07 time-frame involved a	
19	difficult process, but Feldstein has gone	
20	through such transactions himself and	
21	viewed it as no excuse for bad behavior	
22	with front line employees, which is	
23	"never acceptable."	
24	53. Feldstein disagreed with the	Feldstein Depo. at 153:18-23.
25	culture that Nance had created in the	
26	West. Feldstein believed that there	
27	needed to be more openness and more	
28		

hand holding with the sales people.

**Nance Notifies Feldstein That Comcast Calculated Sub Counts Differently  
In Its Reports to Adlink Prior to Comcast's Merger with TWC**

54. In October 2006, after the Adelphia and Comcast cable systems in Los Angeles merged with TWC, Nance's finance team became responsible for reporting subscriber counts to Adlink.

Nance Depo. at 90:25 to 91:13.

55. Using the methodology that TWC historically had used, Nance's group calculated the sub counts for the legacy Comcast system and submitted them to Adlink.

Nance Depo. at 128:15 to 129:10.

56. After doing so, they noticed a drop in sub counts compared to the quarter just before the merger when Comcast had reported its own sub counts.

Nance Depo. at 121:23 to 122:18.

57. Nance does not know what definition of "subscriber" Comcast used when it calculated its sub counts for its submissions to Adlink and testified, "It wasn't my responsibility to know that."

Nance Depo. at 125:1-6; 126:11 to 127:25 (has no idea prior to the merger how Comcast calculated its sub counts)

58. Nance began to investigate the drop and learned that Dewji had been responsible for submitting Comcast's

Nance Depo. at 129:6-18.

Dewji Depo. 58:10 to 60:10.

Feldstein Decl. ¶ 78, Exh. 17.

1	sub counts to Adlink.	
2	59. During Feldstein's employment at	Feldstein Depo. at 35:17 to 36:5;
3	Comcast, he had no involvement in	41:7-42:1.
4	calculating sub counts for Adlink.	Feldstein Decl. ¶ 27.
5		Dewji Depo. at 10:5 to 11:2; 18:18-
6		21; 29:3-6
7	60. In October 2006, Nance asked	Dewji Depo. at 58:10 to 63:14.
8	Dewji how Comcast had calculated sub	Feldstein Decl. ¶ 78, Exh. 17.
9	counts. Dewji described her	Nance Depo. at 123:5-8; 130:6-21;
10	methodology and said that she was	133:1-7.
11	including an estimate of "frees" or non-	
12	paying customers. On October 17,	
13	2006, emailed Nance a spreadsheet that	
14	unmistakably reflected her methodology.	
15	Nance believes that Dewji understood	
16	that there was a difference between the	
17	way that TWC and Comcast calculated	
18	sub counts, but does not know whether	
19	Dewji thought her calculation at	
20	Comcast was incorrect and he has no	
21	idea how Comcast did the calculation or	
22	what they were thinking when they	
23	performed the calculation.	
24	61. The information that Dewji	Dewji Depo. at 11:22 to 12:10.
25	provided showed that, while she was at	Nance Depo. at 126:8-10.
26	Comcast, her sub count reports included	
27	certain non-paying viewers, including	
28		

1 2 3 4 5	“gratis” accounts or “frees” (viewers who received free service), bulk (which estimated viewership in multiple dwelling units), and “theft” (unauthorized viewers).	
6 7 8 9 10	62. Based on Dewji’s 20 years of experience in the cable industry, she understood her calculation to provide a reasonable estimate of real “eyeballs” that viewed ads.	Dewji Depo. at 9:24 to 12:10;
11 12 13 14 15	63. TWC’s sub count reports to Adlink (which were calculated under Nance’s supervision) included only <i>paid</i> subscribers and excluded, for example, “frees.”	Feldstein Decl. ¶ 7 Nance Depo. at 126:8-10
16 17 18 19 20 21	64. On November 28, 2006, Nance had an analysis prepared that opined that Comcast had inflated its sub counts by 15-17% in 2005 and 2006 (pre-merger) and that, as a result, Adlink had overpaid Comcast a total of \$3.9 million.	Nance Depo. at 121:23 to 122:3; 130:17 to 131:5; 329: 10-17, Feldstein Decl. ¶ 65, Exh. 4 (AN44-45)
22 23 24	65. TWC had about a 15% stake in Adlink at the time.	Feldstein Decl. ¶ 26. Dewji Depo. at 39:21-40:3.
25 26 27 28	66. If it were true that Adlink had overpaid Comcast by a total of \$3.9 million for the two-year period of 2005 and 2006, TWC would not have been	Feldstein Decl. ¶ 26. Dewji Depo. at 39:21-40:3.

1	owed the entire \$3.9 million, but only its	
2	15% share of that sum (or about	
3	\$585,000).	
4	67. In early 2008, Feldstein prepared	Feldstein Decl. ¶ 42, 72, Exh. 11
5	a chart analyzing the materiality of the	(TWC-NANCE 000956)
6	Comcast sub count issue, which	
7	calculated TWC's annual share of the	
8	total estimated over-payment to be only	
9	\$345,000.	
10	68. Either in the fourth quarter of	Feldstein Depo. at 9:12-21
11	2006 or at a meeting in April 2007,	Nance Depo. at 138:8-25 (told
12	Nance first informed Feldstein that "he	Feldstein, Tim Young, Adlink people
13	calculated the subscribers, and there was	and Chris Faw that "there was a
14	a potential difference" in the manner that	significant difference in sub counts")
15	Comcast had calculated its sub counts in	
16	its submissions to Adlink.	
17		
18	69. At a meeting in October 2006 or	Nance Depo. at 138:8 to 139:9;
19	January 2007, Nance informed Joan	143:17-23; 151:3-14 ("Q. So you
20	Gillman that he believed that Comcast	believe in January 2007 you raised it
21	had calculated sub counts in a manner	at the Adlink board meeting? A. To
22	that was different than TWC in its	Joan Gilman, the chair of Adlink's
23	reports to Adlink.	board, yes."); <i>id.</i> at 152:14-25 (Nance
24		informed Joan that "there was – we
25		were pretty certain there was a drop –
26		significant drop in sub counts and that
27		there was an overstatement and errors
28		

1		committed in the prior years”)
2		
3		Gillman Depo. at 62:15 to 69:1-7
4	70. Gillman recalls that, during that	Gillman Depo. at 63:2 to 64:9.
5	conversation, Nance and Feldstein	
6	discussed the possible reasons for the	
7	discrepancy, including Feldstein’s	
8	inquiry as to whether Comcast had sub	
9	count calculation was based on a	
10	“kitchen count.”	
11	71. Nance also mentioned the	Nance Depo. at 149:1-10;153:18-20;
12	Comcast sub count issue to Feldstein in	153:25 to 154:9; 159: 16-21.
13	April 2007. Nance does not recall any	
14	subsequent communications on the topic	
15	prior to January 2008.	
16	72. In Nance’s view, Gillman and	Nance Depo. at 148:21 to 149:2.
17	Feldstein were “silent on the subject” of	
18	sub counts, meaning that they never	
19	“follow[ed] up.”	
20	73. In Gillman’s view, the Comcast	Gillman Depo. at 117:2-118:2 (“So if
21	sub count issue was miniscule compared	I could for a minute put things in
22	to the multi-billion dollar issues that	context, \$2 billion negotiation and a
23	TWC was negotiating with Comcast.	few million dollar exception, no one
24		identified it as an issue.”)
25		
26	74. No one ever told Nance to be	Nance Depo. at 164:18-25; 173:8-11.
27	quiet about the Comcast sub count issue	
28		

1	or not to follow up on it.	
2	75. As Senior Director of Finance in	Nance Depo. at 165:10 to 166:3.
3	the West, it was Nance's job to handle	
4	the sub count issue — not anyone else's.	
5	<b>Gilman Asks Feldstein To Transfer To The West ROC In Los Angeles, Which Makes Nance's Job Redundant</b>	
7	76. In October 2007, Joan Gillman	Gillman Depo. at 94:10 to 97:16;
8	asked Feldstein to transfer to Los	103:24 to 104:5.
9	Angeles to be the Vice President of	
10	Finance for the Media Sales Division	
11	over the West ROC.	
12	77. Although, on paper, the change	Gillman Depo. at 104:14 to 105:19;
13	from Vice President of Finance at the	94:23 to 96:12.
14	corporate office to Vice President of	
15	Finance of Medial Sales over the West	
16	ROC was a demotion, Gillman believed	
17	the job would be a better fit for Feldstein	
18	and would add value for the company.	
19	78. Feldstein had many years of	Feldstein Decl. ¶ 10.
20	experience in the cable industry,	
21	including in Los Angeles and with	
22	Adlink.	
23	79. Because of the size and	Gillman Depo. at 95:10-25 - 96:3-12.
24	complexity of the restructuring in Los	
25	Angeles, Gilman (in consultation with	
26	Artie Minson, Deputy CFO) determined	
27	that the West Region needed someone	

1	with Feldstein's experience to provide	
2	leadership	
3	80. The change was not announced	Feldstein Decl. ¶ 30.
4	immediately, however, because a	Gillman Depo. at 138:22 to 139:3
5	replacement for Feldstein's corporate	
6	Vice President job in New York had not	
7	yet been found.	
8	81. On December 17, 2007, Feldstein	Nance Depo. at 215:17 to 217:1.
9	attended a meeting in Los Angeles.	Feldstein Decl. ¶ 32.
10	While having lunch with Nance,	
11	Feldstein told Nance that he would be	
12	transferring to Los Angeles to take the	
13	role of Vice President of Finance over	
14	the West ROC.	
15	82. The role was senior to Nance's	Nance Depo. at 215:17 to 216:17.
16	job but had similar responsibilities.	Feldstein Decl. ¶ 32.
17	83. Nance expressed concern that his	Feldstein Depo. at 129:12 to 130:13.
18	position was being eliminated. Feldstein	Nance Depo. at 222:5 to 223:3.
19	said he would try to work something out.	
20	84. Feldstein considered the	Feldstein Depo. at 129:12 to 130:13.
21	possibility of placing Nance in	
22	"controller-type" role, which would be a	
23	demotion for Nance.	
24	85. On December 17, 2008, shortly	Nance Depo. at 215:21 to 217:1,
25	after Feldstein's lunch conversation with	300:8-301:6;
26	Nance, Gillman emailed the Media Sales	Feldstein Decl. ¶ 64, Exh. 3. (AN150,
27	Division announcing Feldstein's transfer	157)
28		

1	to Los Angeles.	
2	86. Nance was “devastated” and	Nance Depo. at 216:11-17; 220:3-15.
3	“humiliated” by the news because he felt	
4	he was losing his job to Feldstein.	
5	87. On December 18, 2007, Nance	Nance Depo at 300:8-301:6, Feldstein
6	emailed Vice President of Human	Decl. ¶ 64, Exh. 3. (AN150, 157)
7	Resources Kristin Payne, saying he was	
8	“shocked,” “very nervous and unsure”	
9	about the ramifications of Feldstein’s	
10	transfer, and “very upset and extremely	
11	anxious.”	
12	88. On December 19, 2007, Nance	Nance Depo. at 217:5 to 218:20.
13	spoke with Payne by telephone. Nance	Payne Depo. at 131:5-21; <i>id.</i> at
14	was very upset and expressed concern	125:14-24 (Nance said “Larry Fisher
15	about his job status. Nance also	promised him a VP position” and he
16	conveyed his job demands—including a	“was pretty adamant that he wanted to
17	Vice President title and a three-year	be a VP and put on contract,
18	contract, which he said he deserved and	employment contract”); <i>id.</i> at 131:11-
19	had been promised by his prior bosses.	21 (“I remember him...demanding a
20		VP title”); <i>id.</i> at 132:16-25 (“[H]e
21		seemed pretty adamant that if he was
22		to continue with the company, he
23		really wanted to be in a vice president
24		role.”); <i>id.</i> at 133:2-9 (“[H]e felt that
25		he deserved to be a VP.”).
26	89. On or around December 22, 2007,	Nance Depo. at 328:22-329:17;
27	Nance asked one of his direct reports,	Feldstein Decl. ¶ 65, Exh. 4. (AN44-
28		

1 David Martinez, to locate an email that 2 Nance believed he previously sent to 3 Feldstein attaching the estimate of the 4 Comcast sub count issue that had been 5 prepared in November 2006. Finding 6 the prior email was apparently so 7 important to Nance, that Martinez 8 contacted Josh Hemus to inquire about 9 it, even though Hemus no longer was 10 employed by TWC.	45)
11 90. Payne told Feldstein about the 12 communications she had had with 13 Nance, including his job demands.	Payne Depo. at 131:5-135:4.
14 91. Shortly after Payne's conversation 15 with Nance, Feldstein made the decision 16 to eliminate Nance's position in the 17 West ROC.	Feldstein Depo. 126:3-127:23
18 92. Feldstein had three reasons for his 19 decision to eliminate Nance's position: 20 (1) Feldstein was responsible for 21 eliminating redundancies in the West 22 ROC after the multiple mergers in 2006- 23 08. Due to Feldstein's impending move 24 to Los Angeles, Nance's highly-paid 25 senior finance position was redundant 26 and could not be justified. (2) The tone 27 and substance of Nance's conversation	Feldstein Decl. ¶ 35. Feldstein Depo. at 127:6-17

1 with Payne reflected that Nance would  
 2 not be able to work effectively in a  
 3 demoted role reporting to Feldstein. (3)  
 4 Feldstein was concerned that Nance's  
 5 hot-headed management style would  
 6 undermine the team culture that he  
 7 hoped to cultivate in the West.

8 93. Although Feldstein came to this  
 9 conclusion in mid to late December  
 10 2007 shortly after speaking to Payne, he  
 11 did not inform Nance immediately  
 12 because Feldstein had not yet physically  
 13 transferred to Los Angeles. Feldstein  
 14 still spent a substantial amount of time  
 15 in New York until February, helping to  
 16 orient his replacement, Sean Murtagh.

Feldstein Depo. 126:3-127:23; *see*  
*also id.* at 174:22-25 (decided to let  
 Nance go in "mid to end of  
 December")  
 Feldstein Decl. ¶ 55.

17 **The Rep Letter Of January 8, 2008**

18 94. The quarterly rep letters for which  
 19 Nance was responsible were largely  
 20 based on a template that could be  
 21 tailored to address any specific issues  
 22 arising in the covered quarter.

Feldstein Decl. ¶ 15.

23 95. On January 8, 2008, Nance  
 24 received a standard email that attached  
 25 the template rep letter. The email asked  
 26 him to execute the rep letter for the  
 27 fourth quarter of 2007, to make  
 28

Nance Depo. at 294:9 to 295:13,  
 Feldstein Decl. ¶ 67, Exh. 6.

1 2 3 4 5 6	Feldstein or Gillman aware of any exceptions, and to sign and submit the letter to Angelo Servedio, a Director of Finance at TWC's corporate office who was responsible for aggregating all of the regional letters.	
7 8 9 10 11 12	96. On January 8, 2008, Nance emailed Feldstein (with a copy to Gillman and another signatory to the rep letter, Lisa Meier) proposing six exceptions that he proposed to include in the rep letter.	Nance Depo. at 294:9 to 296:12, Feldstein Decl. ¶ 67, Exh. 6.
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>97. In an email dated January 9, 2008, Feldstein responded to Nance's proposed exceptions as follows:</p> <p style="padding-left: 40px;">“1) The Marketing trade issue is a Cable Division issue and we have flagged it to Corp finance and TWC audit.</p> <p style="padding-left: 40px;">2) I agree with your language just add the Corp approval.</p> <p style="padding-left: 40px;">3) Spoke with Chris Benigo [Director of Finance at Adlink] about the sub issue, and Adlink receives certified sub statemetns from an officer of each MSO</p>	Nance Depo. at 294:9 to 296:12 Feldstein Decl. ¶ 67, Exh. 6.

1 [cable company] on a periodic  
 2 basis per the partnership  
 3 agreement. She is going to send  
 4 me the definition of subs, but  
 5 remember Adlink uses kitchen  
 6 count which includes MDU's  
 7 [Multi Dwelling Units] (broken  
 8 out) and free accounts, etc. Given  
 9 the history we should look at the  
 10 subs but hold as a Rep letter  
 11 exception until we understand the  
 12 differences, but I will default to  
 13 you.

14 4) & 6) The deferred  
 15 revenue issue we can rep from up  
 16 here at Corp, given our  
 17 involvement with Corp  
 18 Accounting and Adlink.

19 5) Per our conversation, I  
 20 think its only a control issue and I  
 21 would have Shabnam [Dewji]  
 22 weigh in."

23 98. On January 9, 2008, Nance  
 24 responded via email explaining why he  
 25 believed that exceptions nos. 1 and 5  
 26 needed to be communicated in the rep  
 27 letter.

Feldstein Decl. ¶ 67, Exh. 6.

1 2 3 4 5 6 7 8 9	99. On January 10, 2008, Feldstein responded to Nance saying, "That's fine."	Feldstein Decl. ¶ 66, Exh. 5.
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	100. Feldstein was not upset that Nance wanted to include exceptions in the rep letter. Many regional rep letters include exceptions and he just viewed it as Nance doing his job.	Feldstein Depo at 108:22-109:1
	101. Other than Feldstein's concern that exceptions include accurate information, Feldstein had no problem whatsoever with Nance including the exception about the Comcast sub count issue.	Feldstein Depo. at 113:5-16
	102. Feldstein spoke with Angelo Servedio about Nance's email listing the exceptions that he planned to include. Servedio's view of Feldstein's reaction was that "He wanted to get the issue straightened out. He wanted to go through each of the items and see whether or not they belong there." Servedio described Feldstein's attitude as "fine. It's not unusual for the directors of finance at the regional level to put exceptions in there, to send exceptions to us at the corporate group	Servedio Depo. at 20:24 to 21:21; 72:13-73:17.

1 2 3 4 5 6 7 8 9 10	and get our opinion on whether or not they should be included So I think he felt as though it was the normal course of business.” Feldstein never expressed a concern that the exceptions might reflect negatively on his performance. From Angelo’s perception, Barry did not appear to be “the least bit annoyed or perturbed by any of the items that Mr. Nance put in his...email.”	
11 12	103. In the final rep letter, Nance included all of the proposed exceptions.	Nance Depo. at 274:10-21 Feldstein Decl. ¶ 68, Exh. 7
13 14 15 16 17 18 19 20 21	104. Nance emailed the rep letter directly to David DeGroff, TWC’s Manager of Internal Control Compliance (ICC), not to Servedio. This was inconsistent with past practice, in which Nance always had forwarded the rep letters to Servedio so that he could accumulate the regional rep letters and pass them on to ICC.	Nance Depo. at 321:23 to 322:8, Feldstein Decl. ¶ 69, Exh. 8 (AN35) Servedio Depo. at 26:9-27:15.
22 23 24 25	105. On January 8, 2008, Nance forwarded his email exchange with Feldstein about Nance’s proposed exceptions to his personal email account.	Nance Depo. at 321:23 to 322:8; Nance Dep. Exh. 17, Mills Decl. Exh. A (AN26)
26	<b>Nance Denies Knowledge Of Any Fraud</b>	
27 28	106. Paragraph 7 of the rep letter of	Nance Depo. at 274:10-21

January 8, 2008 reads as follows: “We have *no knowledge of any fraud or suspected fraud*, whether or not material, involving management or other employees who have a significant role in the ROC’s internal control over financial reporting. In addition, we have *no knowledge of any fraud or suspected fraud* involving other employees where fraud could have a material effect on the accounting records.” (emphasis added)

Feldstein Decl. ¶ 68, Exh. 7

107. Nance did not list any exceptions to paragraph 7.

Nance Depo. at 274:10-21

Feldstein Decl. ¶ 68, Exh. 7

**Exception 22.vii: Comcast’s Alleged Inflation Of Subscriber Counts**

108. Exception 22.vii reads as follows: “Pursuant to paragraph 1.g, we are disclosing with respect to Adlink, we have previously reported to both Adlink and corporate management that there was a material error in sub counts over several years as submitted by the former Comcast system that have never been retroactively corrected or accounted for by the Adlink partnership resulting in the loss of potential revenue to both TWC and the other partners in the partnership.”

Nance Depo. at 274:10-21

Feldstein Decl. ¶ 68, Exh. 7

109. The referenced “paragraph 1.g” of the rep letter is a representation that “[a]ll transactions that are material, individually or in the aggregate, have been properly recorded in the accounting records.”	Nance Depo. at 274:10-21 Feldstein Decl. ¶ 68, Exh. 7
110. On January 14-15, 2008, in an email exchange unrelated to the rep letter, Nance, Feldstein, and others discussed how Comcast and TWC calculated sub counts for Adlink.	Feldstein Decl. ¶ 71, Exh. 10
111. In an email dated January 14, 2008, Feldstein asked Nance, “what do you think is driving the difference” between Comcast’s and TWC’s sub count calculations.	Feldstein Decl. ¶ 71, Exh. 10
112. On January 15, 2008, Nance responded to Feldstein’s question, saying, “Not sure who certified the subs for Comcast back then but it appears that a multiplier was added to the sub counts in the range of 15-17%....” In response, Feldstein asked, “You mean there is a multiplier above the Kitchen count? Could part of it be free accounts?”	Feldstein Decl. ¶ 71, Exh. 10  <i>[Note: “Kitchen count” is an industry term used by Feldstein to include counts of actual “kitchens” or eyeballs, and not only paid subscribers. Feldstein Depo. 31:23-25]</i>
113. On January 15, 2008, Nance responded to Feldstein’s email, saying:	Feldstein Decl. ¶ 71, Exh. 10

1 “Not sure, what I am sure about is that  
2 when TWC began counting the subs  
3 acquired from Comcast and applied  
4 TWC’s methodology they came back  
5 with a difference and when we  
6 investigated it we found that a 15-17%  
7 multiplier was applied by Comcast  
8 before they submitted to Adlink. I think  
9 Shabnam would be your best source for  
10 the how and why part of your  
11 question....”

12 114. On January 14, 2008, David  
13 DeGroff in ICC emailed Nance to  
14 inquire about the materiality of the  
15 exceptions that Nance included in the  
16 rep letter of January 8, 2008.

Feldstein Decl. ¶ 70, Exh. 9  
(AN28/TWC-NANCE 001592)  
Nance Depo. at 326:2 to 327:9

17 115. For the Comcast sub count issue,  
18 DeGroff asked if the financial impact  
19 would be more or less than \$5 million.  
20 As noted above, in Nance’s November  
21 2006 calculation, he had estimated that  
22 Adlink had overpaid Comcast a total of  
23 \$3.9 million in 2004 and 2005. In his  
24 response to DeGroff, Nance said that  
25 “for the last two years of overstatement  
26 it’s approximately \$4 million so for the  
27 life of the overstatement this could be in  
28

Feldstein Decl. ¶ 70, Exh. 9  
(AN28/TWC-NANCE 001592)

1	excess of \$10 million.”	
2	116. Nance’s email did not inform	Feldstein Decl. ¶ 70, Exh. 9
3	DeGroff that Nance had calculated this	(AN28/TWC-NANCE 001592)
4	\$4 million over-payment estimate in	
5	November 2006 nor explain why Nance	
6	did not raise the issue in any of the prior	
7	five regional quarterly rep letters.	
8	117. As with all exceptions, Bill	Osborn Depo. at 28:11 to 32:1.
9	Osborn, then Vice President of	
10	Technical Accounting for TWC	
11	corporate, reviewed the exceptions	
12	reported by Nance.	
13	118. Bill Osborn was hired as TWC’s	Feldstein Decl. ¶ 41; Osborn Depo.
14	Vice President of Technical Accounting	at 28:11 to 32:1; <i>see also id.</i> at 59:21-
15	in 2003. Prior to that, Osborn served	60:24 (whether it was \$4 million or
16	for two years as Executive Director of	\$10 million, it was not material, and
17	External Financial Reporting and	they needed to focus their attention on
18	Accounting Policy at Time Warner Inc.	significant issues); <i>id.</i> at 84:18-21
19	Before that, he was at partner at	(even if the sub count issue was
20	PricewaterhouseCoopers, where he had	valued at \$20 million, it still would
21	been employed for fourteen years. He is	not have been material for disclosure
22	a Certified Public Accountant. Effective	purposes).
23	February 1, 2008, he was promoted to	
24	Senior Vice President and Controller	
25	and Chief Accounting Officer. Osborn	
26	reviewed the information relating to the	
27	Comcast sub count issue and determined	
28		

1 that \$4 - \$10 million was not material to  
 2 the accuracy of TWC's financial  
 3 statements—even if the entire amount  
 4 was for a single year as opposed to over  
 5 a period of years. He reported his  
 6 conclusion to TWC's outside auditor.

7 119. Materiality for purposes of impact  
 8 on TWC's financial statements depends  
 9 on the facts and circumstances of the  
 10 issue. If an issue has a potential  
 11 financial impact of \$5 million it is  
 12 reported to the outside auditor for it to  
 13 track—but that amount still is not  
 14 material to TWC. An issue valued at \$5  
 15 million is not material because of the  
 16 amount of TWC's operating income. A  
 17 \$5 million issue would not affect a  
 18 shareholder or potential shareholder's  
 19 decision whether to invest in TWC or  
 20 not, given TWC's size. The potential  
 21 amount in issue would have to  
 22 significantly exceed the amounts raised  
 23 in Nance's exceptions to approach  
 24 materiality.

25 120. From an accounting perspective,  
 26 Osbourn determined that nothing else  
 27 needed to be done with the Comcast sub  
 28

Osbourn Depo. 43:7-44:1

Osbourn Depo. at 135:20-137:11

1	count issue. The outside auditor agreed.	
2	121. Osbourn never heard anyone	Osbourn Depo. at 155:9-16.
3	suggest that Nance thought the	
4	subscriber count issue involved any type	
5	of fraud.	
6	122. In Feldstein's discussions with	Osbourn Depo. at 92:23 to 94:3.
7	Osbourn about the exception concerning	
8	the Comcast sub count issue, his	
9	demeanor "was normal. Barry is a very	
10	talkative individual. And he was his	
11	normal, talkative self." Feldstein did not	
12	indicate that he disagreed with Nance or	
13	that this could prove to be embarrassing	
14	to him. He expressed no concern to	
15	Osbourn that an overstatement of sub	
16	counts by Comcast would reflect	
17	negatively on him as a manger.	
18	123. Servedio also said that Feldstein	Servedio Depo. at 41:13-17.
19	did not seem concerned about the	
20	exception relating to the sub count issue.	
21	<b>Exceptions 22.ix &amp; x: Treatment Of Adlink's Deferred Revenue Reserve</b>	
22	124. Exception 22.ix reads as follows:	Feldstein Decl. ¶ 68, Exh. 7.
23	"We are deferring to the NY corporate	
24	office the recognition of the Adlink	
25	deferred revenue that relates to the pre	
26	Comcast Adelphia merger time frame.	
27	We do not have sufficient evidence or	
28		

1 2 3 4	knowledge in house to determine if this is a goodwill adjustment or a revenue recognition event.”	
5 6 7 8 9 10	125. In response to DeGroff’s email of January 14, 2008 inquiring about the materiality of exception ix, Nance informed DeGroff that the West ROC had been asked to recognize approximately \$2.1 million in revenue.	Feldstein Decl. ¶ 70, Exh. 9 (AN28/TWC-NANCE 001592)
11 12 13 14 15 16 17	126. Exception 22.x reads as follows: “We cannot represent that the 2007 true up of working capital accounts with Comcast properly reflected their share of Adlink’s deferred revenue liability at the time of the acquisition and are deferring such rep to the NY corporate office.”	Feldstein Decl. ¶ 68, Exh. 7
18 19 20	127. A “true up” occurs at the last stage of a merger when final issues are resolved and the deal is closed.	Feldstein Decl. ¶ 46.
21 22 23 24 25 26 27 28	128. The issues in exceptions 22.ix and x stem from a deferred revenue reserve on Adlink’s books arising in the early 2000 time frame and the treatment of that reserve during the Adelphia/Comcast merger with TWC. Exception 22.ix relates to Adelphia. Exception 22.x relates to Comcast.	Feldstein Decl. ¶ 43.

129. Adlink sold advertising based on Nielsen ratings points. If the promised ratings points were not delivered, Adlink could potentially be responsible for compensating advertisers for the under-delivery of ratings in the form of free ad spots called “make goods.”	Feldstein Decl. ¶ 44.
130. In early 2000, an Adlink account executive misrepresented ratings points to advertisers.	Feldstein Decl. ¶ 44 Nance Depo. at 188:24-25 to 189:1-17
131. Due to these two issues related to the under-delivery of ratings points, Adlink’s outside auditor required it to create a deferred revenue reserve. The reserve represented the value of the under-delivery of ratings points and the amount for which Adlink could be liable if the advertisers sought to be compensated for the under-delivery via “make goods” ad spots.	Feldstein Decl. ¶ 44.
132. Each Adlink partner was responsible for a <i>pro rata</i> share of this deferred revenue “liability.”	Feldstein Decl. ¶ 44.
133. While Feldstein still was at Comcast, Adlink’s Board of Directors appointed him and Nance to be members of the audit committee. Feldstein and	Feldstein Decl. ¶ 45.

1 Nance were asked to create a plan to	
2 address this deferred revenue reserve so	
3 that, eventually, it could be cleared from	
4 Adlink's books.	
5 134. Feldstein and Nance created a	Feldstein Decl. ¶ 45.
6 multi-step plan to address the Adlink's	
7 deferred revenue reserve. They also	
8 informed Adlink's Board that the entire	
9 liability eventually would "time out"	
10 ( <i>i.e.</i> , barred by the statute of limitations)	
11 and that it was unlikely that any	
12 advertisers would pursue Adlink for the	
13 under-delivery of ratings points.	
14 135. In October 2006, Nance spoke to	Feldstein Decl. ¶ 46.
15 Feldstein and proposed that, as part of	
16 TWC's merger negotiations with	
17 Comcast and Adelphia, TWC should	
18 seek a payment or adjustment to	
19 represent Adelphia's and Comcast's	
20 shares of the deferred revenue liability	
21 on Adlink's books.	
22 136. Based on Feldstein's work with	Feldstein Decl. ¶ 47.
23 Nance on Adlink's audit committee,	
24 Feldstein did not believe that the	
25 deferred revenue reserve was "real," <i>i.e.</i> ,	
26 that Adlink or any of its partners ever	
27 would have to pay any advertiser to	
28	

1 2 3 4	compensate for the under-delivery of ratings points. Feldstein believed that the liability would just “time out.”	
5 6 7 8 9 10	137. Feldstein thought that Nance’s proposal to seek payment from Comcast and Adelphia to compensate TWC for money that TWC never would pay in connection with Adlink’s deferred revenue reserve lacked integrity and could harm negotiations.	Feldstein Decl. ¶ 47.
11 12 13 14 15 16	138. On October 24, 2006, Nance emailed Feldstein and others a chart that reflected the amount of deferred revenue on Adlink’s books for 2004 - 2006 and the percentage share for which each Adlink partner was responsible.	Feldstein Decl. ¶ 73, Exh. 12
17 18 19 20 21 22	139. In response to Nance’s October 24th email, on October 25, Feldstein emailed Nance saying, “Let’s be careful[.] Comcast will take the position that the reserve is not valid given what I communicated [while] I was there.”	Feldstein Decl. ¶ 73, Exh. 12
23 24 25 26 27 28	140. Nance responded to Feldstein by email saying, “I hear you, it was always Time Warner’s position that this was a valid liability in that it was based on the audited GAAP financial statements. I	Feldstein Decl. ¶ 73, Exh. 12

1 2 3 4	recognize it is a tough position for you now that you are sitting in the TWC chair. I am sure it will be a negotiation at the end of the day....”	
5 6 7 8 9 10 11 12 13 14	141. Nance believed that an accounting entry should have been made as part of the true-up process of the Comcast acquisition to reflect Comcast’s share of the deferred revenue liability, which would affect the purchase price. Failing to pursue the issue meant that TWC would be out about \$2 million that it could possibly have recovered from Comcast.	Nance Depo. at 180:14-25 to 181:103; <i>id.</i> at 182:22-25 to 183:1-7
15 16 17 18 19 20	142. A decision whether or not to pursue cash or other remedy from Comcast or Adelphia in the true-up stage was a business decision that was not involve accounting or GAAP-related issues.	Feldstein Decl. ¶ 47.
21 22 23 24 25 26 27 28	143. The issue raised in exception 22.ix first arose in June 2007 when TWC discovered that, although only Adlink was required to create a deferred revenue reserve related to its account executive’s misrepresentation of ratings points, Adelphia actually had itself	Feldstein Decl. ¶ 48.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	booked \$ 2.1 million of deferred revenue.	
	144. TWC also discovered that Adlink (although not required to do so) had run a large number of free “make good” ads for advertisers that had been affected by the under-delivery of ratings points.	Feldstein Decl. ¶ 48.
	145. In consultation with Bill Osbourn and others, Feldstein made the judgment that the value of those free spots could be recognized as revenue and the deferred revenue reserve could thereby be reduced.	Feldstein Decl. ¶ 48.
	146. The value of the free spots that Adlink had run was determined to be at least \$2.1 million. Therefore, Feldstein decided to recognize \$2.1 million in revenue and clear the \$2.1 million deferred revenue reserve that had been on Adelphia’s books.	Feldstein Decl ¶ 49; ¶ 74, Exh. 13 (AN16-17) Nance Dep. 322:9-15
	147. Nance was copied to the emails relating to this issue and asked whether the \$2.1 million should be booked by TWC corporate rather than the West ROC. Nance requested affidavits from Adlink reflecting that it had, in fact, run free spots valued at least \$2.1 million	Nance Dep. 322:9-15 Feldstein Decl. ¶ 74, Exh. 13 (AN16-17) Nance Depo. at 190:24-25 to 192:8 (in June/July 2007, Nance asked Feldstein to record \$2.1 million in revenue recognition at corporate level

1		rather than locally because Nance did
2		not have the supporting
3		documentation)
4	148. In an email dated June 21, 2007,	Feldstein Decl. ¶ 77, Exh. 16 (TWC
5	Adlink sent Nance the “affidavits related	Nance 659-660)
6	to the Make-Up weight,” which reflected	
7	that Adlink had run nearly 6,000 free	
8	spots during August 2006 – March 2007.	
9	Based on those affidavits, TWC	
10	calculated the value of the free spots to	
11	be \$2,974,000. Feldstein forwarded this	
12	calculation to Nance and Osbourn, and	
13	Nance responded, “Excellent, thanks.”	
14	149. In an email dated June 22, 2007,	Feldstein Decl. ¶ 77, Exh. 16 (TWC
15	Feldstein asked Nance, “feel better?”	Nance 659-660)
16	Nance responded: “Definitely, thanks.”	
17	150. Nance did not mention this issue	Feldstein Decl. ¶ 50.
18	relating to the \$2.1 million in deferred	
19	revenue in the regional rep letter for the	
20	third quarter of 2007.	
21	<b>Exception 22.v: Cable Division’s Booking of Barter Transactions</b>	
22	151. Exception 22.v reads as follows:	Feldstein Decl. ¶ 68, Exh. 7.
23	“We represent that for all non-marketing	
24	orders [i.e., orders from the Media Sales	
25	Division, not the marketing department	
26	of the Cable Division] have been entered	
27	at fair market value. However, we have	
28		

1 been made aware that from time to time  
 2 the marketing department staff in the  
 3 corporate office and the [Cable  
 4 Division] enter transactions which in  
 5 fact are trade arrangements with outside  
 6 third parties. Since we do not account  
 7 for marketing orders we can represent  
 8 that these transactions are being  
 9 recorded at fair value.”

10 152. A “trade arrangement” is also  
 11 called a “barter transaction,” which is a  
 12 non-cash exchange of goods and  
 13 services, such as the exchange of TWC  
 14 advertising time for baseball tickets.

Nance Depo. at 193:20 to 194:1.  
 Feldstein Decl. ¶ 51.

15 153. Organizationally, the Cable  
 16 Division is distinct from the Media Sales  
 17 Division and has its own finance team.  
 18 Nance’s team had no authority over or  
 19 responsibility for the Cable Division’s  
 20 accounting.

Feldstein Decl. ¶ 52.

21 154. Nance’s concern was that the  
 22 Cable Division might be engaging in  
 23 barter transactions but not reflecting  
 24 those transactions on its books.

Nance Depo. at 194:2-21

25 155. Nance admits that Feldstein’s  
 26 only connection to the barter transaction  
 27 issue was that “he [was] an officer of the  
 28

Nance Depo. at 199:18-22; 200:23 to  
 201:6.

1	company.”	
2	156. In emails dated January 9-10,	Nance Depo at 283:22-284:10,
3	2007 to Feldstein, Osbourn, and others,	Feldstein Decl. ¶ 75, Exh. 14 (AN95-
4	Nance had previously raised questions	96)
5	about the accounting for barter	
6	transactions in the Cable Division vs. the	
7	Media Sales Division.	
8	157. The value of annual barter	Osbourn Depo. at 74:19 to 76:10.
9	transactions is so low, that, no matter	Feldstein ¶ 53.
10	how they’re recorded, they could never	
11	materially impact the accuracy of	
12	TWC’s financial statements.	
13	158. In fact, because the revenue is	Feldstein Decl. ¶ 53.
14	booked equal to the expense in barter	Nance Depo at 283:22-284:10;
15	transactions, they have no bottom-line	Feldstein Decl. ¶ 75, Exh. 14 (AN95-
16	impact on TWC’s profit/loss statement.	96) (Michael Stravino in technical
17		accounting advises Nance that,
18		“Barter transactions should be
19		recorded,” but “[t]here is generally no
20		net impact to our p & l [profits & loss
21		statement] since the two sides of the
22		transaction are assigned the same
23		value.”).
24	<b>Exception 22.viii: Lack Of Written Contracts For Six Clients</b>	
25	159. Exception 22.viii reads as follows:	Feldstein Decl. ¶ 67, Exh. 6 (TWC-
26	“Pursuant to paragraph 2.b we are	NANCE 676-679)
27	disclosing that during the 4th quarter, we	
28		

1 2 3 4 5	obtained knowledge that the ROC traffic department was running six PI [Per Inquiry] clients without contracts and without going thru the SOX approved order entry process.”	
6 7 8 9 10	160. The referenced “paragraph 2.b” states that the signatories have disclosed all deficiencies in the design or operation of internal control over financial reporting.	Feldstein Decl. ¶ 67, Exh. 6 (TWC-NANCE 676-679)
11 12 13 14 15 16	161. After the Adelphia/Comcast merger with TWC, TWC found a handful of Adelphia/Comcast legacy client for which there were no written contracts relating to the running of advertising in “filler” spots.	Nance Depo. 328:3-13; Feldstein Decl. ¶ 76, Exh. 15 (AN40-42)
17 18 19 20 21 22 23 24 25	162. Nance was included in emails between the finance and traffic departments exchanged on July 19, 2007 and July 24, 2007 that identified the six clients that did not have written contracts, explained why that was so, and attached a chart that provided the value of the ads that had been run for these clients.	Nance Depo. 328:3-13; Feldstein Decl. ¶ 76, Exh. 15 (AN40-42)
26 27 28	163. In an email dated July 24, 2007, the Traffic Operations Manager stated	Nance Depo. 328:3-12; Feldstein Decl. ¶ 76, Exh. 15 (AN40-

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	that all filler spots for the six identified clients with no written contracts would end that same day.	42)
	164. The existence of a written contract for running ads or evidence of the parties' past practice are necessary to determine <i>when</i> revenue is recognized (either when the obligation is incurred or when the cash is received).	Osbourn Depo. at 70:24-72:7
	165. The value of these arrangements generally was only several thousand dollars per month and, therefore, the related accounting entries would have absolutely no impact on the accuracy of TWC's financial statements	Nance Depo. 328:3-12 Feldstein Decl. ¶ 76, Exh. 15 (AN40-42)
	166. In Nance's response to DeGroff's email inquiring about the materiality of exception 22.viii, Nance did not even provide a monetary figure. Rather, he said that the exception identified an internal control deficiency because the Traffic Department failed to use the approved order entry system for these six clients.	Feldstein Decl. ¶ 70, Exh. 9
	167. Nance had no reason to believe that Feldstein disapproved of Nance reporting this exception.	Nance Depo. at 204:6-24.

**Feldstein Notifies Nance Of His Termination**

168. By February 2008, Feldstein was spending more time in Los Angeles and was able to focus more on his new role in the West ROC. He wanted to transition Nance out before the end of February so that the Charter deal would not be disrupted by the transition.

Feldstein Decl. ¶ 55.

169. On February 17, 2009, Ken Cole from Human Resources and Feldstein met with Nance and informed him of his termination.

Nance Depo. at 227:5-15.

170. As part of this termination, Nance was offered a generous severance package, which he refused.

Nance Depo. at 228:20-22.

171. Over the next several months, TWC eliminated other director-level positions in the Western Region as well, including the Controller at Adlink (Michele Hagopian) and the Chief Financial Officer (Chris Benigo).

Feldstein Decl. ¶ 56.

Nance Depo. at 312:5-12

172. Bill Osbourn's responsibilities include Sarbanes Oxley compliance for TWC. At the time that he learned of Nance's termination in February 2008, he knew about the rep letter exceptions submitted by Nance, which could be

Osbourn Depo. 6:25 to 10:3

1 interpreted as identifying “deficiencies”  
 2 under Sarbanes Oxley’s tiered  
 3 framework for categorizing control  
 4 deficiencies.

5 173. “Deficiencies” under Sarbanes  
 6 Oxley (as opposed to “significant  
 7 deficiencies” and “material  
 8 weaknesses”) are fairly common and  
 9 would have a de minimis impact on  
 10 financial statements. They need not be  
 11 reported to the company’s outside  
 12 auditor or to the public.

Osbourn Depo. at 6:25 to 10:3

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